

NOTICE  
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2013 IL App (4th) 130037-U

NO. 4-13-0037

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 10, 2013

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

In re: the Marriage of	)	Appeal from
THOMAS CULP,	)	Circuit Court of
Petitioner-Appellant,	)	Coles County
and	)	No. 05D161
ANGELA N. CULP, n/k/a ANGELA N. REINHOLD,	)	
Respondent-Appellee.	)	Honorable
	)	Teresa K. Righter,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Turner and Holder White concurred in the judgment.

### ORDER

¶ 1 *Held:* Respondent mother did not demonstrate a willful violation of the visitation order and the circuit court did not have the authority to modify the visitation order absent pending motion.

¶ 2 Petitioner, Thomas Culp, initiated contempt proceedings against his former spouse, respondent, Angela N. Culp, n/k/a Angela N. Reinhold, based on violations of a visitation order. Following a hearing, the trial court (1) entered a finding of no contempt and (2) modified the visitation schedule, finding the modification was in the best interests of the children.

¶ 3 Thomas appeals, arguing the trial court erred in (1) failing to find Angela in contempt for violating the visitation order and (2) modifying the visitation schedule when no pleading had been filed requesting such relief. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5           Because the parties are familiar with the facts and acrimonious history of this case, we set forth only those facts necessary to understand this court's disposition. The parties married on January 13, 2003, and had two children, Julian (born December 14, 2001) and Grace (born January 15, 2004). Thomas filed a petition for dissolution of marriage on August 4, 2005. A September 22, 2005, docket entry shows Angela was granted emergency temporary custody of the children. While the dissolution proceedings were pending, Angela filed on May 22, 2006, a petition to remove Julian and Grace to Tennessee. The trial court entered a judgment for dissolution of marriage on grounds only on August 24, 2006. Following multiple evidentiary hearings, the trial court entered a written order on April 10, 2007, awarding sole custody of the children to Angela and visitation to Thomas approximately one weekend each month, with extended weekends for Thanksgiving and Christmas in alternating years, and two two-week periods of visitation during the summer. The written order provided for Thomas "to take whatever steps are necessary to have his driver's license reinstated" and Angela to provide the transportation for monthly visitation until Thomas' driver's license was reinstated. Thereafter, the parties would share the responsibility for transportation. The order also granted Angela's removal petition to Tennessee.

¶ 6           On June 29, 2007, and July 12, 2007, Thomas filed petitions for rules to show cause alleging Angela failed to comply with the visitation order. Following a hearing on July 20, 2007, the trial court entered a docket entry awarding Thomas make-up visitation and clarifying the visitation order entered on April 10, 2007. On February 25, 2008, Thomas again filed a petition for rule to show cause alleging Angela failed to comply with the visitation order. On September 16, 2008, Angela filed an answer to Thomas' petition, offering as an affirmative

defense that she denied Thomas visitation with the children believing Thomas had sexually abused the children. Further, Angela filed a petition for adjudication of indirect civil contempt alleging Thomas failed "to take whatever steps are necessary and attempt to have his driver's license reinstated" and "refused and failed to pay his child support obligation." Angela also filed a petition to modify, restrict, or deny Thomas visitation alleging "unsupervised visitation with the dependent minor children, seriously endangers their physical, mental, emotional and moral welfare." Following a hearing on February 20, 2009, the trial court (1) vacated the rule issued against Angela, (2) found Thomas in indirect civil contempt, (3) ordered Thomas to pay Angela's attorney fees in the amount of \$1,230.47, and (4) entered a child support arrearage in favor of Angela, in the amount of \$9,432.34. Although the court scheduled the matter for further status on June 19, 2009, no hearing was held.

¶ 7 On April 3, 2009, Angela again filed a petition for adjudication of indirect civil contempt alleging Thomas received temporary total disability benefits and failed to pay any portion as child support. Although the record on appeal shows the trial court began a hearing on the petition on June 30, 2009, and continued the hearing to August 25, 2009, no hearing was held on August 25, 2009. The next docket entry, dated April 2, 2012, shows Thomas was awarded make-up visitation from April 2, 2012, to April 7, 2012.

¶ 8 On August 23, 2012, Thomas filed a petition to suspend child support, which the trial court granted on September 6, 2012. Also on September 6, 2012, Thomas filed a petition for rule to show cause alleging Angela again failed to comply with the visitation order. On September 20, 2012, Thomas filed a verified petition for order of protection against Angela, seeking custody of the children and denying Angela visitation.

¶ 9 On October 22, 2012, the trial court set December 19, 2012, as the hearing date on the petition for rule to show cause filed by Thomas on September 6, 2012; Thomas' verified petition for order of protection against Angela; and "all issues concerning custody, visitation, and [child support]." The court ordered the parties to appear. The court conducted the evidentiary hearing on December 19, 2012, with both parties appearing *pro se*. A report of the proceedings for that evidentiary hearing is included in the record on appeal.

¶ 10 The trial court began the evidentiary hearing advising the parties that it had reviewed the record and the pleadings, finding the critical issue was the lack of "a current workable visitation schedule." The parties initially agreed to engage in an informal dialogue with the court regarding what each believed to be a reasonable visitation schedule. However, Thomas later objected to any further discussion with the court, stating he wished to proceed on his petition for rule to show cause. In response to Thomas' objection, the court stated its intent to "put[] in place a reasonable visitation schedule that's going to work."

¶ 11 Angela testified that she had remarried and lived with her husband and the children in Abilene, Texas. Julian was 11 years old and Grace was 9 years old. Angela was willing to transport the children to Illinois for four to six weeks of summer visitation with Thomas but did not have the financial resources to assume any additional transportation costs.

¶ 12 Thomas testified that he lived in Charleston, Illinois. He was not working and had no income. He relied on family and friends and had a pending workers' compensation claim. He first suggested a "half year to half year" visitation schedule, and then a schedule that provided him visitation on all holidays and summers. Thomas insisted that he had already provided over half of the transportation involved in visitation with the children, relying on friends and family.

Thomas suggested the children travel by air or train to accommodate a visitation schedule, estimating approximately \$800 in annual travel expenses for each parent. Although he agreed that the trial court should "go ahead and set the six weeks up for the summer for now and set the Christmas visitation up," he also stated his intent to file a petition to modify custody, to be heard the following month. Thomas testified that although he had traveled to Texas on 15 occasions during the past year, assisting an individual in securing custody of the individual's child, he would not travel to Texas for visitation with the children.

¶ 13 Following a brief recess, Thomas proceeded to hearing on the petition for rule to show cause filed on September 6, 2012, alleging Angela failed to comply with the visitation order entered on April 10, 2007. Angela testified that although she had "always made an attempt to try to cooperate and try to make sure he has his visitation," she did not always have access to safe and reliable transportation and often could not afford transportation costs, and neither could Thomas. Thomas detailed the arrangements he had made with multiple individuals to assist in transporting the children for visitation since 2007.

¶ 14 The trial court found that "although Ms. Reinhold did not comply fully with the order of this Court that it was not done willfully or contentiously, and so the Court does not find her in Indirect Civil Contempt of Court for the allegations contained in the September 6, 2012, petition." Further, the Court found it to be in the best interest of the children to modify the visitation schedule, "so that it is workable or that the order can be complied with given the present financial circumstances of both parties and the living arrangements of both parties." The order provided for six consecutive weeks of summer visitation with Thomas and two additional weeks over the Christmas holiday. Further, Thomas could visit the children in Texas "for a full

weekend plus two additional days," with reasonable notice to Angela.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Initially, we note Angela did not file an appellate brief. However, as the record is simple and the claimed errors are such that we can easily decide them without the aid of an appellee's brief, we proceed (see *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)).

¶ 18 Thomas first argues the trial court erred in failing to find Angela in contempt for violating the visitation order. We disagree.

¶ 19 A court has the authority to enforce its orders by way of contempt. *In re G.B.*, 88 Ill. 2d 36, 41, 430 N.E.2d 1096, 1098 (1981). Civil contempt proceedings are coercive, that is, the civil contempt procedure is designed to compel the contemnor to perform a specific act. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43, 558 N.E.2d 404, 415 (1990). "Civil contempt proceedings have two fundamental attributes: (1) the contemnor must be capable of taking the action sought to be coerced, and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279, 860 N.E.2d 539, 547 (2006). Whether a party is guilty of indirect civil contempt is a question of fact for the trial court, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Spent*, 342 Ill. App. 3d 643, 653-54, 796 N.E.2d 191, 200 (2003).

¶ 20 The record on appeal contains sufficient evidence to support the trial court's determination that Angela's failure to comply with the visitation order entered on April 10, 2007,

was not willful or contumacious. According to Thomas, his September 6, 2012, petition for rule to show cause sought a finding of indirect civil contempt against Angela "from April 7, 2012[,] the OP date" until December 19, 2012, the date of the hearing on the petition. Although the record shows the parties present on April 2, 2012, and Thomas awarded make-up visitation from April 2, 2012, to April 7, 2012, we find nothing in the record regarding an "OP."

¶ 21 The evidence presented at the December 19, 2012, hearing included Angela's testimony that she attempted to cooperate with Thomas and tried to provide Thomas the ordered visitation with the children, but she did not always have access to safe and reliable transportation and often could not afford the transportation costs. The April 10, 2007, order provided Thomas visitation approximately one weekend each month, with extended weekends for Thanksgiving and Christmas in alternating years, and two two-week periods of visitation during the summer. The order also provided that Thomas was to "take whatever steps are necessary to have his driver's license reinstated" and until that time, Angela was to provide the transportation for monthly visitation. Thereafter, the parties were to share the responsibility for transportation. Although Thomas testified that he had provided over half of the transportation involved in visitation with the children, he relied on friends and family and had not yet had his driver's license reinstated. Angela testified as to the various vehicles she had driven and their general states of disrepair. She had limited financial resources and could not always afford the costs associated with transporting the children to Illinois each month. The trial court had suspended Thomas' obligation to pay child support effective August 23, 2012.

¶ 22 On these facts, the trial court found that "although Ms. Reinhold did not comply fully with the order of this Court that it was not done willfully or contentiously." The evidence

supports the court's finding that Angela's conduct was not willful or contumacious. We conclude, therefore, that the trial court's judgment was not against the manifest weight of the evidence or an abuse of discretion.

¶ 23 In support of his argument that the trial court erred in failing to find Angela in contempt, Thomas refers this court to section 607.1 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/607.1 (West 2010)). Section 607.1 of the Dissolution Act provides a party an alternative remedy to seek enforcement of court-ordered visitation that is separate and apart from the trial court's contempt power. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 114, 855 N.E.2d 953, 966 (2006). In this case, Thomas did not file a petition alleging visitation abuse pursuant to section 607.1 of the Dissolution Act, but instead filed a petition for rule to show cause seeking a finding of contempt based on violations of the visitation order. Accordingly, section 607.1 of the Dissolution Act does not apply to the instant proceeding.

¶ 24 Thomas also argues the trial court erred in requiring him "to take the stand first" when proceeding on his petition for rule to show cause. Thomas contends the court should have required Angela "to explain her actions" before requiring Thomas to offer evidence in support of his petition. Thomas may be confused, believing he previously satisfied his evidentiary burden when the trial court held a hearing on his petition on September 20, 2012, in Angela's absence. The court's docket entry on that date reads "[s]worn evd. heard. RTSC to issue set for 10/22/12 at 1:30." No transcript of the proceedings for the September 20, 2012, hearing is included in the record.

"A petition for a rule to show cause is the method for



notifying the court that a court order may have been violated, and the petitioner requests a hearing on the issue. The petition for a rule to show cause and the rule to show cause operate together to inform the alleged contemnor of the allegations against her. The rule to show cause is the method by which the court brings the parties before it for a hearing. It also notifies the alleged contemnor of the time and place of the hearing. Thus, the petition for a rule to show cause initiates the contempt proceedings, but it does not establish that a violation of a court order has in fact occurred. The rule to show cause, issued by the court, is not a finding [that] a violation of a court order has occurred, but part of the process of notifying the alleged contemnor of the charges, and time and place of the hearing. At the hearing, the burden is on the petitioner to show a violation of a court order has occurred. Once this showing has been made, the burden shifts to the alleged contemnor to show the violation was not wilful." *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 508, 608 N.E.2d 1339, 1345 (1993).

Accordingly, although on September 20, 2012, the trial court ordered a rule to show cause to issue, it was incumbent on Thomas to proceed first with his evidence at the hearing on December 19, 2012.

¶ 25 Contrary to Thomas' argument, the trial court properly required Thomas to prove

by a preponderance of the evidence that Angela violated the visitation order. Upon finding Thomas "presented sufficient evidence to shift the burden of proof on the Rule to Show Cause to [Angela]," the court invited Angela "to present evidence to the Court indicating why you should not be held in contempt of court for not complying with the court order as you've testified to by [Thomas'] questioning." Accordingly, the court did not err in first requiring Thomas to prove by a preponderance of the evidence that Angela had violated the visitation order.

¶ 26           Additionally, Thomas argues the trial court should have found Angela in indirect civil contempt based on her move from Tennessee to Texas. We note the following. Upon inquiry by the court, Angela testified that she moved with the children to Texas in April 2012, approximately eight months earlier. The record does not show Angela filed a petition to remove the children from Tennessee to Texas, pursuant to section 609 of the Dissolution Act (750 ILCS 5/609 (West 2010) (see *Banister v. Partridge*, 2013 IL App (4th) 120916, ¶ 43, 984 N.E.2d 598 (the trial court has the authority to address a subsequent removal petition))). However, nothing in Thomas' petition for rule to show cause suggests Angela's move to Texas as a basis for a contempt finding and so the trial court's denial of Thomas' petition on that basis was correct, and the issue of the propriety of the move to Texas is not before us.

¶ 27           Thomas next argues the trial court erred in modifying the visitation schedule when no pleading had been filed requesting such relief. Thomas is correct that a petition for modification of visitation was not before the court on December 19, 2012, and, therefore, the court was without authority to enter an order modifying the visitation schedule.

¶ 28           "A judgment is void if the court lacked jurisdiction over the parties  
or subject matter, or if it 'lack[ed] the inherent power to enter the

particular order involved.' [Citation.] \*\*\*

Circuit courts have 'original jurisdiction of all justiciable matters' with only limited exceptions. [Citation.] A justiciable question is one which involves the adverse legal interests of the parties. [Citation.] The court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition. [Citations.] These pleadings function to frame the issues for the trial court and to circumscribe the relief the court is empowered to order; a party cannot be granted relief in the absence of corresponding pleadings. [Citations.] Thus, the circuit court's jurisdiction, while plenary, is not boundless, and where no justiciable issue is presented to the court through proper pleadings, the court cannot adjudicate an issue *sua sponte*. Orders entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action exceeding its jurisdiction." *Ligon v. Williams*, 264 Ill. App. 3d 701, 706-07, 637 N.E.2d 633, 637-38 (1994).

¶ 29 In the instant case, the trial court exceeded its jurisdiction in modifying the visitation schedule where no pleading requested this relief. The only pleading before the court was Thomas' petition for rule to show cause alleging Angela failed to comply with the visitation order entered on April 10, 2007. The justiciable matter before the court was an alleged violation of the April 10, 2007, visitation order and not modification of that order. The court had no

jurisdiction to *sua sponte* modify the visitation schedule and, thus, the court's order is void.

¶ 30 "The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201, 909 N.E.2d 783, 796 (2009). In a docket entry dated October 22, 2012, the trial court set December 19, 2012, as the hearing date on the petition for rule to show cause filed by Thomas on September 6, 2012, Thomas' verified petition for order of protection against Angela, and "all issues concerning custody, visitation, and [child support]." The court ordered the parties to appear. At the December 19, 2012, hearing, the court "dismissed and denied" Thomas' verified petition for order of protection against Angela. With regard to "all issues concerning custody, visitation, and [child support]," the record contains no evidence that Thomas was notified that a modification of visitation, which had not been requested by any party, would be considered or decided on December 19, 2012.

¶ 31 It would be "unjust, unfair, and inequitable" to allow the order modifying the visitation schedule to stand where it is clear that Thomas had no notice that such an order was contemplated (see *In re Custody of Ayala*, 344 Ill. App. 3d 574, 587, 800 N.E.2d 524, 537 (2003) (quoting *Berg v. Mid-America Industrial, Inc.*, 293 Ill. App. 3d 731, 735, 688 N.E.2d 699, 702 (1997))). The trial court's modification of the visitation schedule materially changed the status of the case. Without notice that modification of visitation was at issue on December 19, 2012, Thomas was denied the opportunity to be heard, present objections, and present his case. Accordingly, the order modifying the visitation schedule is void. Given no pleading requested the relief awarded and Thomas had no notice that modification of the visitation schedule would be addressed on December 19, 2012, the court exceeded its jurisdiction in entering an order

modifying the visitation schedule, and we vacate the order. While we understand the trial court's frustration with this case and its desire to facilitate the matter of visitation, it was nonetheless obligated to act within the framework of existing law. See *Ligon*, 264 Ill. App. 3d at 707, 637 N.E.2d at 638 ("where no justiciable issue is presented to the court through proper pleadings, the court cannot adjudicate an issue *sua sponte*").

¶ 32

### III. CONCLUSION

¶ 33

For the reasons stated, we affirm the trial court's no contempt finding and vacate the order modifying the visitation schedule.

¶ 34

Affirmed in part and vacated in part.